

COMMITTEE ON PUBLIC WORKS AND PURCHASING
(Standing Committee of Berkeley County Council)

Chairman: Mr. Robert O. Call, Jr., Council District No. 3

A **meeting** of the **COMMITTEE ON PUBLIC WORKS AND PURCHASING**, Standing Committee of Berkeley County Council, was held on **Monday, October 12, 2009**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 7:03 p.m.

PRESENT: Chairman Robert O. Call, Jr., Council District No. 3; Committee Member Phillip Farley, Council District No. 1; Committee Member Timothy J. Callanan, Council District No. 2; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Dennis L. Fish, Council District No. 5; Committee Member Jack H. Schurlknight, Council District No. 6; Committee Member Steve C. Davis, Council District No. 8; County Supervisor Daniel W. Davis, ex officio; Ms. Nicole Scott Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Committee Member Caldwell Pinckney, Jr., Council District No. 7 was excused.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.

Chairman Call called the meeting to order and asked for approval of minutes from the meetings of the Committee on Public Works and Purchasing held September 14, 2009 and September 28, 2009.

It was moved by Committee Member Schurlknight and seconded by Committee Member Callanan to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

A. Mr. Frank Carson, Berkeley County Engineer, Re: Transportation Sales Tax Program, Selection of Local Street Resurfacing projects.

Mr. Carson greeted the Committee and stated that a number of major resurfacing projects were listed on the 2008 Local Option Transportation Sales Tax Referendum. There was also a list of Allocation for Local Street Resurfacing that listed the municipalities of Goose Creek, Hanahan, Moncks Corner, St. Stephens and unincorporated Berkeley County. There was not a prescribed procedure for selecting those projects but the intent had always been that those communities would have some input into the process. There was some discussion to use population as the primary factor. The cost of normal resurfacing is estimated at \$300,000 per mile. The proposed guidelines for selection would solicit recommended projects from the mayors of Goose Creek, Hanahan, Moncks Corner and St. Stephens. The list of recommended

projects would be listed in priority order. Those projects would be limited to repair, reconstruction and/or resurfacing of existing publicly maintained roads. There has been some discussion with one municipality that would propose to build a new road for a considered project. That was not the intent of the referendum. There is a careful and deliberate designation of projects so that the revenues will fund the projects.

Committee Member Farley stated that the Henry Brown Blvd. intersection improvement at Tanner Ford has already been completed.

Mr. Carson stated that the intersection at Tanner Ford was completed before the referendum. The project at Old Hwy. 52 and Cypress Gardens Road was a DOT project that was on hold for funding.

Committee Member C. Davis inquired as to the funds for the projects that have already been completed.

Mr. Carson stated there are no detailed cost estimates for those projects. There was no dollar amount for the local resurfacing. A target of \$9 million was estimated for the projects. More accurate estimates will be made at the time of resurfacing. The municipalities and staff can prioritize the list, but do not want to over extend any expenditures.

Committee Member Fish stated the projects should save the County some funds because they are constantly repairing pot holes and patching.

Mr. Carson stated the first criteria are safety, traffic volume and road condition and maintenance. Some recognition of the municipal population is a priority. The actual recommendation and proposal will be from one of the five consulting firms that have been contracted to provide the cost and a priority list. A list will be presented to the Committee that has been prioritized by staff and the municipalities.

Committee Member S. Davis inquired as to the criteria that is being used to prioritize the roads outside of municipalities.

Mr. Carson replied that the same criteria, safety, traffic volume and road conditions, are being used.

Committee Member S. Davis stated that Dennis Ridge Road is not listed.

Mr. Carson replied that Dennis Ridge Road is a dirt road and the projects are for resurfacing paved roads. The paving projects were listed on the referendum.

Committee Member S. Davis inquired as to how did Tobacco Road get on the list.

Mr. Carson responded that Tobacco Road is on the paving project list to be built.

Supervisor D. Davis commented that the bids have been received for Hwy. 17A. The bid was 25% under budget. With the current economic times, the revenues are down about 25%. It is fairly certain that all of the promised projects can be completed. There are no additional funds available because the project cost less than anticipated.

Mr. Carson requested that the guidelines be adopted so the municipalities can be contacted regarding resurfacing projects.

Committee S. Davis stated for the record, that the Town of Moncks Corner Mayor is soliciting support from County Council to consider creating a new road to facilitate the recreational facility in Moncks Corner and he would support the new road.

Mr. Carson stated that road would be considered new construction. The referendum only listed new construction capacity projects.

It was moved by Committee Member Schurlknight and seconded by Committee Member S. Davis to **approve the Transportation Sales Tax Program and the Selection of Local Street Resurfacing projects.** The motion passed by unanimous voice vote of the Committee.

B. Mr. Jerry E. Beckley, IT Manager, Division of Computing and IT, Berkeley County Water and Sanitation, Re: Vendor selection for CMMS Implementation.

Ms. Angela Pinson, Administration Director, Berkeley County Water & Sanitation, addressed the Committee and requested approval to award the implementation contract for a Computerized Maintenance Management System, (CMMS), to Westin Engineering. The implementation of the system has been budgeted in the amount of \$350,000 and included in the 2009-2010 budget. This system is an asset management program that monitors the equipment and pump stations.

It was moved by Committee Member Callanan and seconded by Committee Member Schurlknight to **approve** the award of the contract for implementation for a Computerized Maintenance Management System to Westin Engineering.. The motion passed by unanimous voice vote of the Committee.

C. Review prior to Third Reading of Bill No. 09-40, an ordinance to amend Ordinance No. 97-4-18 to allow for changes in the preference that is given to Berkeley County and South Carolina businesses in the awarding of county contracts.

Committee Member S. Davis inquired if there had been active consideration for minority businesses in the ordinance.

Ms. Nicole Ewing, County Attorney, inquired if he would like a response on the record or preserve the Attorney-Client privilege and go into Executive Session.

Committee Member S. Davis indicated there was no need to go into Executive Session and he waived the Attorney-Client privilege.

Ms. Ewing responded that after some legal research, it was learned that any preference given on the basis of race, under the Constitution and the Supreme Court cases, is illegal and subject to the 14th Amendment. If Council wanted to do a Crosin study and enact procurement measures to right a wrong that it allowed under the 14th Amendment, to give racial preference because of race, is not allowed.

Committee Member S. Davis responded that the legal assumption is based on race. A minority business can also be a female owned business.

Ms. Ewing stated that minority was defined so research was conducted based on the information that was provided at the time. Further research can be conducted regarding gender based issues.

Committee Member S. Davis inquired if other counties in South Carolina had any preference for minority businesses.

Ms. Ewing stated that the Association of Counties was contacted regarding this matter. They listed 10 ordinances that provide for notice to minority businesses but do not have a minority preference.

Committee Member S. Davis requested an amendment to the ordinance to grant a notice preference.

Ms. Ewing stated that Mr. John Hamer, Director of Procurement, uses a Governor's list that is established and sends out notice as requested.

Mr. Hamer stated that Berkeley County uses the Governor's Minority List as a guide. The County does not have a certification program. Small, women and minority businesses are solicited as much as possible.

Committee Member S. Davis stated the reference is to minority businesses in Berkeley County.

Mr. Hamer stated that Local Preference is 5% and also a 5% for the state if there are no local vendors.

Committee Member Farley stated that Berkeley County does not have a business license and we would not know that the businesses operate and could be notified.

Mr. Hamer responded that the vendor application questions for a minority business. Mr. Joshua Gruber, Assistant County Attorney accompanied Mr. Hamer to a meeting with the

Governor's office regarding implementing a new program for the vendor file on the new IFIS system to track minority businesses.

Committee Member S. Davis withdrew his amendment to the ordinance.

Committee Member Schurlknight asked the County Attorney what would be the criteria for a bona fide county business. If a business has a main office in another county and smaller satellite office in Berkeley County, would it be classified as a Berkeley County business?

Ms. Ewing responded that the ordinance addresses the requirements for a local Berkeley County vendor. An individual, partnership, association or corporation that is authorized to transact business within the State and has a physical business address located and operating within the limits of Berkeley County and has been conducting business in the County for a period of 12 months or more, prior to the bid opening date. The vendor also has to provide proof of payment of all applicable taxes and fees, such as sales tax, property tax, business property taxes, etc. The burden will be on the vendor to meet that standard. They will have to provide to Mr. Hamer sufficient information to prove they are a County vendor.

Committee Member Schurlknight stated that a bona fide contractor in Berkeley County will pay equipment taxes to Berkeley County.

Ms. Ewing stated the vendor would have to be current on taxes due to the County. There can be no outstanding delinquent tax bills, business personal property bills, etc.

Committee Member Schurlknight stated that if a contractor has an office in Berkeley County, but paying their equipment taxes to Charleston County, they would be a bona fide Charleston County business.

Ms. Ewing stated that the definition does not state whether or not they pay taxes to Charleston or Berkeley County. It just requires that they have a physical business address and that all taxes are current.

Committee Member Fish stated that as an accountant, the annual forms that are sent in by clients and businesses, the contractor is taxed in the county that the equipment is located in. They would pay taxes in Berkeley County if the equipment was located in Berkeley County.

Ms. Ewing stated that if the equipment is located in Berkeley County, then they would be required to pay the taxes here. If the equipment is not located in Berkeley County, and they can still meet the other vendor definitions, then they will be considered a Berkeley County vendor. They just have to be authorized to transact business within the State and have a physical business address located and operating within the limits of Berkeley County. If a vendor could have a physical business address in Charleston County and Berkeley County and still only pay Charleston County taxes, it would still meet the definition of a Berkeley County vendor.

Chairman Call stated there is a lot of business equipment in Berkeley County that doesn't require registration by the State Highway Department. Berkeley County is missing a lot of taxes on that equipment. If there was a business license, even without a charge, the County would know about the businesses in the County. There would be no question of a business in Berkeley County for the last 12 months.

Supervisor D. Davis stated that business license has been a topic with many council members. There was a group to investigate this in the past. The municipalities have been contacted and requested they not issue business licenses if they owe business personal property taxes. Most of the municipalities have agreed and will begin this year. This procurement ordinance will state that anyone in the County cannot conduct business with anyone that has not paid their taxes.

Chairman Call inquired as to how this would help with the equipment that is used exclusively in the unincorporated areas. In the past, there was a vendor that owed the County \$70,000 and it was not paid and the equipment went back to a leasing company. The lessor was responsible for the taxes, not the leasing company.

Supervisor D. Davis stated that more will be collected than before, but not all.

Committee Member Fish stated that if equipment depreciates, it is required by law to submit those forms. Berkeley County does not have the process to collect the tax.

Committee Member Schurlknight that if a business has a physical address in Berkeley County and claimed to be a bona fide contractor in Berkeley County and not paying any kind of equipment taxes, that would be a determining factor. If a business is located in four different counties, they would pay taxes in four different counties. There needs to be a safeguard against a business getting a physical address as a Berkeley County contractor. There are some bona fide Berkeley County contractors that need the work. Some business coming in from out of the area and getting a physical address and claiming they are Berkeley County contractor and they are not. It can be determined if they are paying taxes on their equipment.

Ms. Ewing stated if there is a heavy equipment distributor and we know they have equipment, it is very easy to follow up on the taxes. The issue comes from office space and business personal property tax. It is difficult for staff to follow up without spot checks and inspections. If a business files in Charleston County and does not file in Berkeley County, there is no way to know without an inspection of the location or an audit of their State and Federal taxes.

Committee Member Schurlknight inquired if the burden could be put on the businesses to prove they are a bona fide Berkeley County business with tax receipts, etc.

Ms. Ewing stated that research would have to be conducted to determine if this is feasible. A business registration ordinance was tried in the past and there were issues with the contents of the ordinance. The business registration statute is not flawed, but some of the

parameters that Council placed in the ordinance, made it difficult to incorporate via our tax programs and computer systems. A business registration ordinance could be explored again and a recommendation could be made by staff. It would not be a full business license with fees but does have a process to track business in Berkeley County for local preference but also expand upon issues with zoning, etc.

Chairman Call inquired if depreciation schedules that are filed with their tax returns could also be viewed.

Ms. Ewing stated the business registration statute would have to be explored again to answer that question.

Chairman Call stated that if a Berkeley County business started bidding, would they still be required to meet the 12 month requirement.

Ms. Ewing stated that when a request for bids is sent out, the contractor must be in business for 12 months prior to the bid deadline, before a local preference can be given.

Chairman Call stated that would preclude the business for a year.

Mr. Hamer stated the ordinance was drafted in the same manner as the State preference. This would prevent a business to start in Berkeley County just to get the local preference and then they would leave Berkeley County.

Committee Member Callanan inquired as to who makes the decision whether a business is local or not. An individual that lost a bid, contacted Mr. Callanan and did meet all of the qualifications but a decision was made because the company headquarters was located in Charleston with a sub office in Berkeley County to store equipment. There needs to be a fair system in place that would determine if it is a bona fide Berkeley County business. The business should be able to appeal the decision.

Mr. Hamer stated the decision is made by the Director of Procurement. The business does have the right to protest the decision to Council. Mr. Hamer has, on occasion, inspected business sites to insure they are a Berkeley County business. The bid package has an affidavit to be signed that states the business meets the criteria.

Committee Member Schurlknight stated that a business owner would need to prove that they are a bona fide business in Berkeley County. One of the criteria that could be used is if the business pays taxes on their equipment in Berkeley County. A paid tax receipt would be proof of a Berkeley County business.

Mr. Hamer agreed that a tax receipt would be proof. If there is a question, the site could be visited. The business must sign the affidavit that they meet the criteria to be a local business.

Committee Member Schurlknight instructed the County Attorney to investigate the legal ramifications of requiring a tax receipt as simple proof of a Berkeley County business.

It was moved by Committee Member Schurlknight and seconded by Committee Member Fish to **approve** prior to **Third Reading of Bill No. 09-40**. The motion passed by unanimous voice vote of the Committee.

Committee Member Farley stated that at the insurance discussion from the last meeting, figures from BCWS were to be forthcoming.

Supervisor D. Davis stated the BCWS figures were not included in the presentation, but the rates were for all employees.

It was moved by Committee Member Callanan and seconded by Committee Member C. Davis to **adjourn** the Committee on Public Works and Purchasing meeting. The motion passed by unanimous voice vote of the Committee.

The meeting ended at 7:41 pm.

November 9, 2009

Date Approved

PUBLIC WORKS AND PURCHASING
(Standing Committee of Berkeley County Council)

Chairman: Mr. Robert O. Call, Jr., District No. 3

Members: Mr. Phillip Farley, District No. 1
Mr. Timothy J. Callanan, District No. 2
Mrs. Cathy S. Davis, District No. 4
Mr. Dennis Fish, District No. 5
Mr. Jack H. Schurlknight, District No. 6
Mr. Caldwell Pinckney, Jr., District No. 7
Mr. Steve C. Davis, District No. 8
Mr. Daniel W. Davis, Supervisor, ex officio

A **meeting** of the **COMMITTEE ON PUBLIC WORKS AND PURCHASING**, Standing Committee of Berkeley County Council, will be held on **Monday October 12, 2009**, following the meetings of the Committees on Water and Sanitation, Community Services, Justice and Public Safety and Land Use at **6:00 p.m.**, in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

AGENDA

APPROVAL OF MINUTES

September 14, 2009

September 28, 2009

A. Mr. Frank Carson, Berkeley County Engineer, Re: Transportation Sales Tax Program, Selection of Local Street Resurfacing projects.

B. Mr. Jerry E. Beckley, IT Manager, Division of Computing and IT, Berkeley County Water and Sanitation, Re: Vendor selection for CMMS Implementation.

C. Review prior to Third Reading of Bill No. 09-40, an **ordinance** to amend **Ordinance No. 97-4-18** to allow for changes in the **preference** that is given to Berkeley County and South Carolina **businesses** in the **awarding of county contracts**.

October 7, 2009
S/Barbara B. Austin, CCC
Clerk of County Council